

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 03, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PATRICK G. HOFFMAN ,

Petitioner,

v.

NO NAMED RESPONDENT,

Respondent.

NO: 4:18-CV-05055-SMJ

**ORDER DIRECTING TRANSFER
TO NINTH CIRCUIT COURT OF
APPEALS**

On March 23, 2018, the Court received, via the United States Postal Service, documents concerning the conviction of Patrick G. Hoffman, a prisoner at the Washington State Penitentiary. The envelope was sent from Walla Walla, Washington, but with a return address of Brussels, Belgium. The initial page indicates that it is a “Personal Restraint Petition,” which is ordinarily a post-conviction collateral challenge presented to the Washington State appellate courts.

When bringing a claim in the United States District Court, the appropriate mechanism to challenge a state court conviction would be a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. *See White v. Lambert*, 370 F.3d

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1 1002, 1009–10 (9th Cir. 2004) *overruled on other grounds by Hayward v.*
2 *Marshall*, 603 F.3d 546 (9th Cir. 2010) (“[Section] 2254 is the exclusive vehicle
3 for a habeas petition by a state prisoner in custody pursuant to a state court
4 judgment”). Therefore, the Court liberally construes the submission from Mr.
5 Hoffman as a habeas petition under 28 U.S.C. § 2254. The \$5.00 filing fee was not
6 paid to commence this action and Mr. Hoffman did not present an application to
7 proceed *in forma pauperis*.

8 Court records show that Mr. Hoffman previously pursued a habeas petition
9 in the United States District Court, Eastern District of Washington, in cause
10 number 2:92-cv-00082-CI. The petitions in that action were dismissed on October
11 25, 1994, and the Ninth Circuit Court of Appeals issued a mandate affirming the
12 District Court’s decision in appeal number 94-36152, on October 23, 1995.

13 Therefore, the current petition will be treated as a second or successive petition
14 under 28 U.S.C. § 2244.

15 A District Court lacks authority to review successive habeas petitions filed
16 without authorization from the Circuit Court of Appeals. 28 U.S.C.
17 § 2244(b)(3)(A). Specifically, the habeas corpus statute provides:

18 **“Before a second or successive application permitted by this section is**
19 **filed in the district court, the applicant shall move in the appropriate**
20 **court of appeals for an order authorizing the district court to consider**
the application.”


1 *See* 28 U.S.C. § 2244(b)(3)(A); Ninth Circuit Rule 22-3. When a second or
2 successive petition is mistakenly submitted to the district court, that court shall
3 refer it to the court of appeals. Ninth Circuit Rule 22-3(a).

4 Accordingly, **IT IS ORDERED** this case is **TRANSFERRED** to the Ninth
5 Circuit Court of Appeals, pursuant to 28 U.S.C. § 1631 and Ninth Circuit Rule 22-
6 3(a).

7 Petitioner is advised this transfer would not of itself constitute compliance
8 with § 2244(b)(3) and Ninth Circuit Rule 22-3; he must still file an application for
9 leave to proceed in the Court of Appeals and make the showing required by
10 § 2244(b)(2). Petitioner should consult this statute and Ninth Circuit Rule 22-3 for
11 further information.

12 **IT IS SO ORDERED.** The Clerk of Court shall enter this Order, provide a
13 copy to Petitioner, and close the file.

14 **DATED** this 3rd day of April 2018.

15 
16 SALVADOR MENDEZ, JR.
17 United States District Judge
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